



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1995

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR95-1345

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30534.

The City of Dallas (the "city") has received a request for "any and all investigative reports concerning the death of Robert Oscar Harris, Sr." You do not object to release of some of the requested information. You claim, however, that sections 552.101 and 552.108 of the Government Code except the remainder of the requested information from required public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 48.101 of the Human Resources Code, as added in the recent legislative session, provides:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

Act of May 19, 1995, 74th Leg., R.S., ch. 303, § 14, 1995 Tex. Sess. Law Serv. 2672, 2678 (Vernon) (to be codified as Hum. Res. Code § 48.101(a)). This section also provides that the exchange of confidential information with another state agency or governmental entity does not affect whether the information is subject to disclosure under chapter 552 of the Government Code. *Id.*, 1995 Tex. Sess. Law Serv. at 2678 (to be codified as Hum. Res. Code § 48.101(f)). Therefore, the information developed as part of the Adult Protective Services investigation is excepted from disclosure under section 48.101 of the Human Resources Code as applied through section 552.101 of the Government Code.

The autopsy report must be disclosed. It is expressly made public by the Code of Criminal Procedure. Code Crim. Proc. art. 49.25, § 11.

Criminal history report information ("CHRI") is generally confidential and not subject to disclosure. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, the city must withhold CHRI under section 552.101 of the Government Code.

Some of the information submitted to this office for review appears to be medical records. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). Access to these records is governed by a statute outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

Additionally, some of the information appears to be confidential under section 773.091 of the Health and Safety Code. Section 773.091 provides:

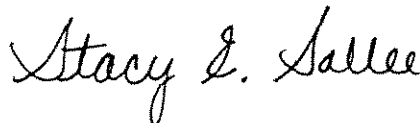
(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance. Accordingly, the city must withhold the submitted EMS records under section 552.101 of the Government Code, except for any "information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services."

As for the remainder of the submitted information, you state that section 552.108 excepts it from disclosure because that information relates to an on-going criminal investigation. However, it is our understanding that the investigation is now closed. Therefore, absent a showing that release of the remainder of the requested information would unduly interfere with law enforcement, the city may not withhold that information under section 552.108.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note that information regarding prescription medication is usually protected by common-law privacy as incorporated into the Open Records Act by section 552.101. Open Records Decision No. 455 (1987) However, a person's right of privacy is personal and a deceased person has no right of privacy. Open Records Decision No. 432 (1985). Therefore, the city may not withhold that information.

Ref.: ID# 30534

Enclosures: Submitted documents

cc: Ms. Rhea Ann Weaver  
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(w/o enclosures)